

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 7, 2006

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal Nos. 2006AP1212
2006AP1213
STATE OF WISCONSIN**

**Cir. Ct. Nos. 1996FO181
1996FO182**

**IN COURT OF APPEALS
DISTRICT III**

SAWYER COUNTY ZONING ADMINISTRATION,

PLAINTIFF-RESPONDENT,

V.

JAMES REED,

DEFENDANT,

LINDA KREMER REED,

APPELLANT.

APPEALS from orders of the circuit court for Sawyer County:
JOHN P. ANDERSON, Judge. *Reversed and cause remanded with directions.*

¶1 HOOVER, P.J.¹ Linda Kremer Reed appeals orders denying her motion to vacate an order for injunctive relief in two cases. Kremer Reed asserts the court lacked personal jurisdiction because her ex-husband, James Reed, was the only named party in the action. We agree the circuit court did not have jurisdiction to enter an order against Kremer Reed because she was never named as a defendant nor served as statutorily required. We therefore reverse the court's orders denying Kremer Reed's motion to vacate the August 4, 2005 orders. Enforcement action may not be taken against Kremer Reed without bringing an action in which she is properly served. Any prior proceedings against Reed are unaffected by this decision.²

BACKGROUND

¶2 On August 21, 1996, the Sawyer County Zoning Administration cited Reed for erecting a non-conforming structure at his residence without a variance. This became Sawyer County Case No. 1996FO181. The Administration also cited Reed for falsifying a land use permit. This became Sawyer County Case No. 1996FO182. A court trial was held covering both cases on December 19, 1997. Kremer Reed was never named as a defendant. At Reed's trial, the court informed Kremer Reed, "I have one defendant on these pleadings in front of me, and that's James Reed. You may speak when you're called as a witness ...

¹ These appeals were consolidated on this court's own motion on October 25, 2006, pursuant to WIS. STAT. RULE 809.10(3), and are decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

² The Administration argues the time period for appeal has passed. The Administration bases this contention on the fact that the original order for removal was filed February 2, 1998. However, Kremer Reed has timely appealed the court's February 22, 2006 order denying her motion.

otherwise Mr. Reed is the only one that's got any right to speak” The court found Reed guilty of constructing a non-conforming structure and not guilty of falsifying a land use permit. On February 2, 1998, the court ordered Reed to remove the non-conforming structure by July 1, 1998.³ Reed never removed the structure.

¶3 In June 2005, the Administration brought a motion for contempt against Reed for failure to comply with the terms of the February 1998 orders. However, the Administration could not locate Reed and served Kremer Reed with the notice. Reed and Kremer Reed had divorced and Kremer Reed still lived in the house that contained the non-conforming structure. On August 4, 2005, Kremer Reed appeared in court without counsel for the motion hearing. The court held that because Kremer Reed was not a party to the original action, it could not find her in contempt.⁴ However, the court granted injunctive relief to the Administration and authorized the Administration to proceed with demolition of the non-conforming structure. On August 30, 2005, Kremer Reed filed a motion to vacate the orders for lack of personal jurisdiction because she was never named as a defendant.⁵ The court denied her motion.

³ The circuit court entered identical orders in both cases. Paragraph (1) of the order found Reed in violation of constructing a non-conforming structure without a variance. Paragraph (3) found Reed not guilty of falsifying a land use permit. Paragraph (4) required Reed to remove the non-conforming structure by July 1, 1998. Therefore, when the Administration brought a motion for contempt for Reed's failure to remove the non-conforming structure, the motion included both original cases. The circuit court held a hearing on both cases on August 4, 2005. Kremer Reed then appealed the court's order for both cases.

⁴ The Administration does not cross-appeal this issue. Both parties solely address the issue of jurisdiction on appeal.

⁵ At the August 4, 2005 hearing the court granted injunctive relief against Kremer Reed in both cases, but stayed the orders for thirty days. Kremer Reed filed a motion to vacate the orders and all previous judgments relating to the cases on August 30, 2005. At that time, the
(continued)

DISCUSSION

¶4 Kremer Reed argues the circuit court did not have personal jurisdiction, *in rem* jurisdiction, or *quasi in rem* jurisdiction. A court may only enter a valid judgment where it has personal jurisdiction, *in rem* jurisdiction, or *quasi in rem* jurisdiction. See WIS. STAT. §§ 801.04(2) and (3). The application of a statute to a set of facts presents a question of law that we review without deference. **Kamps v. DOR**, 2003 WI App 106, ¶11, 264 Wis. 2d 794, 663 N.W.2d 306.

¶5 In order to exercise personal jurisdiction, the court must serve the defendant with a summons. See WIS. STAT. §§ 801.05 and 801.11. A valid summons must contain the name and address of the defendant. WIS. STAT. § 801.09(1). In this case, the summons named only Reed as the defendant. The Administration does not argue the summons was properly served on Kremer Reed or that it named her. Rather, the Administration argues Kremer Reed waived her personal jurisdiction argument by appearing in court.

¶6 Under WIS. STAT. §§ 802.06(8)(a)1 and (8)(a)2, a party may waive the defense of lack of jurisdiction by omitting the defense from a motion or not including it in a responsive pleading. However, the provisions of § 802.06 only apply when there is an action pending. **Hester v. Williams**, 117 Wis. 2d 634, 643, 345 N.W.2d 426 (1984). WISCONSIN STAT. § 801.02(1) provides:

A civil action in which a personal judgment is sought is commenced as to any defendant when a summons and a complaint *naming the person as defendant* are filed with the court, provided service of an authenticated copy of the

court had not yet entered the orders from the August 4 hearing. On appeal, both parties solely address the court's denial of Kremer Reed's August 30 motion for both cases.

summons and of the complaint is made upon the defendant under this chapter within 90 days after filing. (Emphasis added.)

When there is no action pending, the defendant has “no duty to raise any defenses” and cannot waive any defenses. *Hester*, 117 Wis. 2d at 643.

¶7 In this case, Kremer Reed was never named as a defendant. Both cases the Administration cites for the proposition that an appearance constitutes a waiver involve named defendants. See *Lees v. DILHR*, 49 Wis. 2d 491, 182 N.W.2d 245 (1971); *Artis-Wergin v. Artis-Wergin*, 151 Wis. 2d 445, 444 N.W.2d 750 (Ct. App. 1989). Because Kremer Reed was never named as a defendant, the action has not commenced against her, she had no duty to raise any defenses and she could not waive her right to object to lack of jurisdiction. See *Hester*, 117 Wis. 2d at 643-44.

¶8 The Administration also argues the circuit court had *in rem* and *quasi in rem* jurisdiction.⁶ However, WIS. STAT. § 801.12(1) provides that a court exercising jurisdiction *in rem* or *quasi in rem* may only affect the interests of a defendant in an action if the defendant has been served. As noted above, Kremer Reed was not properly served with a valid summons because she was not named as a defendant. See WIS. STAT. § 801.09(1). This action affects Kremer Reed’s interests because it involves razing a portion of the house she lives in. Therefore, the court had no authority under *in rem* or *quasi in rem* jurisdiction.

¶9 Kremer Reed also argues the circuit court violated her due process rights by depriving her of property without notice and an opportunity to be heard

⁶ Jurisdiction *in rem* or *quasi in rem* is appropriate where “the subject of the action is real or personal property” or “[w]hen the action is to declare property within this state a public nuisance.” WIS. STAT. §§ 801.07(1) and (4).

on the merits of the case. *See Fuentes v. Shevin*, 407 U.S. 67, 80 (1972). Kremer Reed asserts that she was deprived of her property “without receiving the procedural safeguards the due process clause of the constitution requires.” *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). The Administration does not respond to Kremer Reed’s due process argument. Unrefuted arguments are deemed admitted. *Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979).

¶10 The circuit court did not have jurisdiction to enter an order against Kremer Reed. We therefore reverse the August 4, 2005 orders and remand these cases so the orders may be vacated.

By the Court.—Orders reversed and cause remanded with directions.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

